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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1197.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE RICHMOND MINING COMPANY OF NEVADA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

FILED JUNE 28, 1890.

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1 In the circuit court of the United States, ninth circuit, in and for the district of Nevada.

Complaint.

THE UNITED STATES OF AMERICA, plaintiffs,
against
THE RICHMOND MINING COMPANY of Nevada, defendant.

The United States of America, the plaintiffs in the above-entitled suit, by Thomas E. Haydon, their attorney for the district of Nevada, complain of the Richmond Mining Company of Nevada, the defendant in said suit, and for cause of action allege:

That the defendant, the Richmond Mining Company of Nevada, is a corporation which was organized, and now exists under and by virtue of the laws of the State of Nevada, and so existed at all of the times hereinafter mentioned, and at all of said times was engaged in carrying on business *on* said State.

2 That on the first day of December, A. D. 1888, and for a long time prior thereto, the above named plaintiffs were, ever since have been, and now are, the owners of the following-described personal property, to wit: Ten thousand bushels of charcoal, which lies in the bins of defendant, at its furnaces in the southern part of the town of Eureka, in Eureka County, in said State; also three hundred cords of wood, which lie in and upon the yard and premises of defendant, in Eureka aforesaid.

Plaintiffs also allege that said charcoal was manufactured from wood which was cut upon the unsurveyed public timber lands of plaintiffs, situated within said State and district, and that said wood was cut and removed from the same lands, and all without the consent of the plaintiffs.

That at all of the times aforesaid said charcoal was, and now is, of the value of eighteen hundred dollars, and at all of said times, and
3 now, said wood was, and is of the value of twenty-one hundred dollars, all in gold coin of the Government of the United States.

That on or about the said first day of December, A. D. 1888, at the county of Eureka, in the State of Nevada, said defendant wrongfully, unlawfully, and without the consent of plaintiffs, took all of said wood and charcoal into its possession, and thence hitherto has and now does as aforesaid wrongfully, and against the consent of plaintiffs, withhold the same from the possession of the plaintiffs, to their damage in the sum of thirty-nine hundred dollars in gold coin of the Government of the United States.

Wherefore the plaintiffs demand judgment against said defendant:

First. For the recovery of the possession of said wood and charcoal.

Second. In case a delivery of said wood and charcoal can not be had, then for a judgment for the value thereof, viz: Thirty-nine hundred dollars ($3,900.00) in gold coin of the Government of the United
4 States, together with the legal interest and costs.

THOS. E. HAYDON,
United States Attorney for the District of Nevada.
HENRY RIVES,
Of Counsel for Plaintiffs.

UNITED STATES OF AMERICA,
State of Nevada and County of Ormsby, ss:

Thomas E. Haydon, being first duly sworn, says that he is the regularly appointed, qualified, and acting district attorney of the United States in and for the district of Nevada; that he has heard read over the foregoing complaint, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein alleged upon information and belief, and as to those matters he believes it to be true.

THOS. E. HAYDON,.

Subscribed and sworn to before me this 4th day of December, A. D., 1888.

T. J. EDWARDS,
Clerk of said Court.

5 (Endorsed:) U. S. cir. court, dist. Nevada. United States vs. Richmond M'g Co. of Nevada. Complaint in replevin. Filed Dec'r 4, 1888. T. J. Edwards, clerk. T. E. Haydon and Henry Rives, atty's for pl'ffs.

6 *Summons.*

United States of America.—In the circuit court of the United States for the district of Nevada.

THE UNITED STATES OF AMERICA, PLAINTIFFS, *vs.* THE RICHMOND MINING COMPANY OF NEVADA, defendant.	Action brought in the said circuit court and complaint filed in the office of the clerk of said circuit court.

The President of the United States of America, greeting: To the Richmond Mining Company of Nevada, defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the circuit court of the United States for the district of Nevada, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons), in the office of the clerk of said court within fifteen days after the service on you of this summons, if served within either of the counties of Ormsby, Douglas, Lyon, Washoe, or Storey, and within forty days after service, if served without the said counties; or judgment by default will be taken against you.

The said action is brought to recover possession of 10,000 bushels of charcoal and 300 cords of wood; said coal being in the bins of defendant at its furnaces in Eureka; and said being in the yard of defendant at Eureka; and if a return of said property can not be had that plaintiffs have judgment for the value thereof, to wit, thirty-nine hundred dollars in gold coin, together with interest and costs of suit. It being alleged that said coal was manufactured from wood which was unlawfully taken from the unsurveyed lands of plaintiffs in the district of Nevada, and that said 300 cords of wood were so taken and removed without the consent of plaintiffs.

And if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you and each of you.

Witness the honorable Melville W. Miller, Chief-Justice of the Supreme Court of the United States of America, this fourth day of December, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the 113th.

[SEAL.] T. J. EDWARDS,
Clerk.

Attest:

———— ————,
Deputy Clerk.

7 OFFICE OF THE U. S. MARSHAL, DISTRICT OF NEVADA,
Virginia City, Nev., Jan'y 7th, 1889.

I hereby certify that I received the within summons together with a certified copy of complaint attached, on the 4th day of December, 1888, and personally served the same on R. K. Morrison as superintendent and secretary of the Richmond Mining Company of Nevada, by personally delivering to him true copies of summons and complaint, and by exhibiting to him the original summons with the seal of the court thereon, at Eureka, Nevada, on the 6th day of December, 1888.

JAMES A. MOORE,
United States Marshal.

I hereby certify that defendant failed for five days to demand the return of said coal and wood upon offering to give an undertaking as provided by law. I therefore held the same as marshal for and as the property of plaintiff until further order of court.

JAMES A. MOORE,
U. S. Marshal.

(Indorsed:) No. 506. In the circuit court of the United States for the district of Nevada. United States vs. Richmond Mining Co. of Nevada. Summons. Replevin. Filed Jan'y 10th, A. D. 1889. T. J. Edwards, clerk, by ———— ————, deputy clerk. T. E. Haydon, attorney for plaintiff. Henry Rives, of counsel.

8 *Motion to quash summons.*

In the circuit court of the United States, ninth circuit and district of Nevada.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
THE RICHMOND MINING COMPANY OF NEVADA, defendant.

You are hereby notified that the Richmond Mining Company of Nevada, above-named defendant appearing specially for the purpose of this motion, and for no other purpose, on Monday, the fourth day of February, A. D. 1889, at 10 o'clock a. m. of said day, or as soon thereafter as said counsel can be heard, will move said court, at the court-room thereof,

in town of Carson City, in the State of Nevada, to set aside and vacate the pretended summons heretofore issued in said action, and to quash the service thereof upon said named defendant, upon the ground that said pretended summons is insufficient and not such a summons as is required
9 by law, in that said pretended summons does not contain a notice, as required by the 26th section of an act of the legislature of the State of Nevada, entitled "An act to regulate proceedings in civil cases in the courts of justice of this State, and to repeal all other acts in relation thereto," approved March 8th, 1869. (General Statutes of Nevada, sec. 3048.)

That this motion will be made upon the summons, pleadings, and files in this action.

WREN & CHENEY,
Attorneys for said named specially appearing Defendant.

To THOMAS E. HAYDON, Esq.,
District Attorney of the United States
in and for the District of Nevada, and
Attorney for said Plaintiff.

(Endorsed): No. 506. Circuit court, ninth circuit, Dist. of Nevada. United States, Plff., vs. The Richmond Mining Company of Nevada, Deft. Notice of motion, (Replevin.) Service admitted this 13th day of Jan., A. D. 1889. Thos. E. Haydon, Atty. of U. S. for Nevada. Filed Jany. 14, 1889. T. J. Edwards, clerk.

10 *Order—time to plead.*

In the circuit court of the United States, ninth circuit and district of Nevada.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE RICHMOND MINING COMPANY OF NEVADA, defendant.

It appearing in the above entitled action that the Richmond Mining Company of Nevada, defendant above named, have specially appeared in said action for the purpose of moving said court to set aside and vacate the summons heretofore issued in said action, and to quash the service thereof on said named defendant, therefore, good cause appearing therefor. It is ordered specially and without predjudice to said named defendant's special appearance herein or motion to set aside and vacate the summons heretofore issued in this action and quash the service thereof on said
11 named defendant that the time for said named defendant to plead in said action be and is extended for the period of forty (40) days after the decision of said motion, and that said named defendant have said period of forty (40) days after the decision of said motion in which to plead in this action.

SABIN, *Judge.*

JAN'Y 10TH, 1889.

(Endorsed): No. 506, circuit court, ninth circuit, dist. of Nevada. United States vs. The Richmond Mg. Co. of Nevada. Order. Filed Jany. 14, 1889. T. J. Edwards, clerk.

Minutes of court, May 13th, 1889.

Order quashing summons, etc.

UNITED STATES
v.
RICHMOND M'G CO. OF NEVA.

The motion to quash the service of summons having been submitted and duly considered by the court, it is now ordered that the same be and is granted.

It is further ordered that an alias summons be issued herein in the form required by section 26 of the civil code of this State.

To which order granting said motion the United States attorney then and there duly excepted.

12 *Alias summons.*

United States of America, in the circuit court of the United States for the district of Nevada.

THE UNITED STATES OF AMERICA, plaintiff, *vs.* THE RICHMOND MINING COMPANY of Nevada, defendant.	Action brought in the said circuit court and complaint filed in the office of the clerk of said circuit court at Carson City, Ormsby County, State of Nevada.

The President of the United States of America, greeting:

To the Richmond Mining Company of Nevada, defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiffs in the circuit court of the United States for the district of Nevada, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons) in the office of the clerk of said court within fifteen days after the service on you of this summons, if served within either of the counties of Ormsby, Douglas, Lyon, Washoe, or Story, and within forty days after service, if served without the said counties, or judgment by default will be taken against you, according to the prayer of the complaint.

The said action is brought to recover possession of 10,000 bushels of charcoal and 300 cords of wood, said coal being in the bins of defendant at its furnaces in Eureka, and said wood being in the yard of defendant at Eureka, and if a return of said property can not be had that plaintiffs have judgment for the value thereof, to wit, thirty-nine hundred dollars in gold coin, together with interest and costs of suit, it being alleged that said coal was manufactured from wood which was unlawfully taken from unsurveyed lands of plaintiffs in the district of Nevada, and that said wood was so taken and removed without plaintiffs' consent.

And if you fail to appear and answer said complaint plaintiffs will apply to the court for the relief demanded therein.

Witness the Honorable Melville W. Fuller, Chief-Justice of the Supreme Court of the United States of America, this 13th day of May, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence the 113th.

A true copy.

Attest:

[SEAL.] T. J. EDWARDS, *Clerk.*

———— ————,
Deputy Clerk.

13 (Indorsed:) No. 506. In the circuit court of the United States for the district of Nevada. United States vs. Richmond Mining Co. of Nevada. Alias summons. Filed July 1st, A. D. 1889. T. J. Edwards, clerk, by ———— ————, deputy clerk. T. E. Haydon, U. S. att'y, and Henry Rives, attorneys for plaintiff.

OFFICE OF THE U. S. MARSHAL,
Dist. of Nevada, July 1st, 1889.

I hereby certify that I received the within summons on the 13th day of May, 1889, and personally served the same on R. K. Morrison, as secretary of the Richmond Mining Co. of Nevada, by delivering to him a true copy and exhibiting to him the original, with the seal of the court thereon, at Eureka, Eureka County, Nevada.

JAMES A. MOORE,
U. S. Marshal.

In United States circuit court, ninth circuit and district of Nevada.

Order—time to plead.

THE UNITED STATES
v.
RICHMOND MINING CO. OF NEVADA.

It appearing to the satisfaction of the court that good cause exists therefor, it is ordered that the defendant have, and it is hereby given, twenty days, or until the further order of court, to plead to the complaint after the decision of the motions to strike out portions of the complaint, and to vacate and set aside the writ of replevin issued in this action.

SABIN, *Judge.*

Aug. 1st, 1889.

(Endorsed:) No. 506, U. S. cir. court, dist. Nevada. The United States vs. Richmond Mining Co. of Nevada. Order extending time to plead.

Filed Aug. 5, 1889. T. J. Edwards, clerk.

15 In the circuit court of the United States, ninth circuit, in and for the district of Nevada.

Answer.

THE UNITED STATES OF AMERICA, PLAINTIFF.
v.
THE RICHMOND MINING COMPANY OF NEVADA, defendant.

Now comes the above-named defendant, the Richmond Mining Company of Nevada, and for answer to the said plaintiff's complaint, herein denies that on the first day of December, A. D. 1888, or at any other time, plaintiffs were, and that plaintiffs now are, the owners of the personal property described in plaintiff's complaint or any part thereof. And for further answer to said complaint defendant alleges that it has not sufficient information upon which to form a belief as to whether any of the wood mentioned or described in plaintiff's complaint was cut or removed from any of the public lands of plaintiff's or not, and therefore
16 denies that any of said wood was cut or removed from such lands.

And for further answer defendant denies that all or any of the wood mentioned or described in plaintiff's complaint was cut or removed without the consent of plaintiffs.

And for a further answer defendant denies that on or about the first day of December, A. D. 1888, at the County of Eureka, State of Nevada, or elsewhere, the defendant wrongfully or unlawfully, or without the consent of plaintiffs, took into its possession any wood of plaintiff's, or that it thence hitherto has or now does wrongfully or against the consent of plaintiffs, withhold the same or any portion thereof from plaintiffs, or that on or about said date it took or removed any wood from the possession of plaintiffs, or that on said date it withheld or since said date has or now does withhold from plaintiffs the possession of the wood described in said complaint, or any portion thereof greater than fifteen cords, or that the
17 same was taken or withheld to the damage of plaintiffs in the sum of thirty-nine hundred dollars or any sum whatever.

Wherefore defendant having fully answered said complaint of plaintiffs prays to be hence dismissed with its costs in this behalf expended.

WREN & CHENEY,
Atty's for Defendant.

STATE OF NEVADA,
County of Eureka, ss:

R. K. Morrison, being first duly sworn, deposes and says that he is an officer, to wit, the secretary of the Richmond Mining Company of Nevada, the defendant herein, and as such officer makes this verification for and on behalf of said defendant. That he has heard the foregiong answer read and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated upon information or belief, and as to those matters he believes it to be true.

R. K. MORRISON.

18 Subscribed and sworn to before me, this 28th day of September, A. D. 1889.

[SEAL.]

F. H. HARMON,
Co. Clerk, Eureka Co., Nevada.

(Endorsed:) No. 506. U. S. cir. court, ninth circuit, district of Nevada. United States of America vs. Richmond Mining Co. of Nevada. Answer. Service admitted Oct. 21st, 1889, J. W. Whitcher, atty's for plfts. Filed Oct. 21, 1889, T. J. Edwards, clerk. Wren & Cheney, atty's for defendant.

19 In the circuit court of the United States, ninth circuit, in and for the district of Nevada, Hon. G. M. Sabin, judge.

Findings.

THE UNITED STATES OF AMERICA,
vs.
THE RICHMOND MINING COMPANY OF NEVADA.

NOVEMBER 23, 1889.

FINDINGS OF THE COURT.

Be it remembered that the above-entitled action came on to be heard before the court on the 21st day of November, 1889, a jury having been by the respective parties expressly waived in writing the parties appeared by counsel; witnesses were examined, and after argument, it was submitted to the court for decision. The court, having fully considered the same, does now make the following findings of fact and conclusions of law:

1. That the defendant, the Richmond Mining Company of Ne-
20 vada, is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, engaged in the business of mining, purchasing, and reducing ores, and separating gold and silver from lead, in the town and county of Eureka, State aforesaid, and was such corporation and so engaged at the time of, and long prior to, the commencement of this action.

2. That at the time of the commencement of this action said defendant was in possession of 16 cords of wood, of the value of six dollars per cord, and seven thousand bushels of charcoal, of the value of 21 cents per bushel, at its works in said town, and that said wood, and the wood from which said charcoal was manufactured, was cut upon the unsurveyed mineral lands of the United States not subject to entry under any existing law of the United States, except for mineral entry; and
21 that said wood was cut and said charcoal was burned by bona fide residents of the said State for use in said county, and sold to said defendants for use in carrying on its said business in said town, at a distance of about three miles from its mines.

3. That the trees from which said wood was cut were a species of scrubby nut-pine, cedar, and what is locally called mountain mahogany, about twelve feet in height on an average, with bodies from four to eight feet in length, and less than twelve inches in diameter and unfit for manufacture into either lumber or timber.

CONCLUSIONS OF LAW.

And, as conclusions of law from the foregoing facts, the court finds that the defendant is entitled to judgment for the return of said wood and charcoal seized by the United States in this action.

Let judgment be entered accordingly.

GEO. M. SABIN,
Judge.

22 NOV. 23D, 1889.

(Endorsed:) U. S. cir. court, dist. Nevada, United States vs. Richmond Mining Company of Nevada. Findings. Filed, Novr. 23d, 1889. T. J. Edwards, clerk.

In the circuit court of the United States, ninth circuit, district of Nevada.

Judgment.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE RICHMOND MINING COMPANY OF NEVADA,
defendant.

This cause came on regularly to be heard before the court sitting without a jury, a jury trial having been expressly waived by the written stipulation of the parties hereto.

Witnesses were called, sworn, and examined on the part of plaintiff and defendant, and documentary evidence introduced, and after argu-
23 ment by counsel for the respective parties the cause was duly submitted to the court for its judgment, and the court having duly considered the evidence so submitted and the argument of counsel, and being fully advised in the premises, files its finding of fact and conclusions of law thereon. Wherefore, by reason of the law and the premises aforesaid it is considered, ordered, and adjudged that defendant do have and recover from the said plaintiff the restitution and possession of seven (7,000) thousand bushels of charcoal, and sixteen (16) cords of cedar wood, now lying and being at or near defendants' reduction works at Eureka, Nevada, as described in the complaint herein, or in case restitution and possession thereof can not be made then the defendant have and recover from the said plaintiff the value of said seven thousand (7,000) bushels of charcoal at
24 the price and sum of twenty-one cents per bushel for each bushel thereof, together with the value of said sixteen cords of wood, at the price and sum of six dollars per cord, amounting in the aggregate to the sum of fifteen hundred and sixty six (1,566) dollars.

Dated and entered Nov. 23d, 1889.

Attest:

T. J. EDWARDS,
Clerk.

UNITED STATES OF AMERICA,
District of Nevada, ss:

I, T. J. Edwards, clerk of the circuit court of the United States for the district of Nevada, do hereby certify that the above and foregoing is a full, true, and correct copy of the original judgment now of record in my office, and that the annexed record is the judgment roll in said action.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at my office in Carson City, this the 23d day of November, A. D. 1889, and in the year of our Independence the 114th.

[SEAL.] T. J. EDWARDS,
Clerk.

(Endorsed:) No. 506. U. S. cir. court, dist. Nevada. United States vs. Richmond Mining Co. of Nevada. Judgment roll. Filed Nov'r 23d, 1889. T. J. Edwards, clerk.

25 In the circuit court of the United States, ninth circuit, district of Nevada. Hon. Geo. M. Sabin, judge.

Opinion.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE RICHMOND MINING COMPANY OF NEVADA, defendant.

This is an action of replevin brought by plaintiff to recover from the defendant the possession of ten thousand bushels of charcoal of the alleged value of $1,800, and three hundred cords of wood of the alleged value of $2,100, the same being at the yard and premises of the defendant, at the town of Eureka, in this State.

The complaint alleges that said coal was manufactured from wood cut and removed from the unsurveyed public timber lands of plaintiff within said State, and that said three hundred cords of wood were cut and
26 removed from said lands, and all so cut and removed unlawfully and without the consent of plaintiff, and that plaintiff is now the owner thereof.

Plaintiff demands judgment for the recovery of the possession of said coal and wood, or for the value thereof, in the sum of $3,900, if recovery of possession can not be had.

The answer of defendant denies that plaintiff is the owner of said personal property; denies that said wood was cut from the lands mentioned in the complaint; denies that defendant wrongfully or unlawfully or without plaintiff's consent took possession of said property or wrongfully or unlawfully withholds possession of the same or any part thereof from plaintiff. The case was tried before the court without a jury.

The findings of fact upon the evidence are brief and as follows:

1. "That the defendant, The Richmond Mining Company of
27 Nevada, is a corporation, duly organized and existing under and by virtue of the laws of the State of Nevada, engaged in the business of mining, purchasing, and reducing ores, and separating gold and silver from lead, in the town and county of Eureka, State aforesaid, and

was such corporation and so engaged at the time of and long prior to the commencement of this action."

2. "That at the time of the commencement of this action said defendant was in possession of 16 cords of woods, of the value of six dollars per cord, and seven thousand bushels of charcoal, of the value of 21 cents per bushel, at its works in said town, and that said wood, and the wood from which said charcoal was manufactured, was cut upon the unsurveyed mineral lands of the United States not subject to entry under any existing law of the United States, except for mineral entry; and that
28 said wood was cut and said charcoal was burned by bona fide residents of the said State for use in the said county, and sold to said defendant for use in carrying on its said business in said town, at a distance of about three miles from its mines."

3. "That the trees from which said wood was cut were a species of scrubby nut pine, cedar, and what is locally called mountain mahogany, about ten or twelve feet in height, or an average, with bodies from four to eight feet in length, and less than twelve inches in diameter, and unfit for manufacture into either lumber or timber."

I believe the correctness of these findings is not questioned by either party. The defendant justifies its purchase and possession of said coal and wood under the provisions of an act of Congress approved June 3, 1878, U. S. Statutes, vol. 20, p. 88, chap. 150. The section of said act
29 under consideration reads as follows:

"That all citizens of the United States and other persons bona fide residents of the State of Colorado or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands,
30 and for other purposes, provided, the *provided the* provisions of this act shall not extend to railroad corporations."

From the findings of fact, as above set forth, it would seem the defendant's justification of the purchase and possession of this coal and wood is complete. It was shown in evidence, and admitted, that the land upon which all of this wood was cut and removed was and is unsurveyed public land of plaintiff.

A large number of witnesses was examined as to the character of this land, whether mineral or not, and whether more valuable for the timber or wood thereon than for known mines. The witnesses differed in their judgment as to the character of this land, or at least as to the particular limited part thereof, the locus in quo, from which this wood had been removed. On this point, the most of the witnesses for plaintiff were teamsters, or men engaged in cutting, hauling, or furnishing wood or
31 coal to those desiring to purchase it. Their evidence, generally, was to the effect that, upon the particular tracts of land, upon the

hills or mountains, whence this wood had removed, they had never seen any well-known mines, nor had they observed marked or well-defined traces of mineral-bearing ledges.

By their own evidence it appeared that they were not looking for mines or ledges, not interested especially in them, and their observation was only the most cursory. They were in no wise skilled in discovering or noting mineral signs and traces, and it would have been purely accidental had any of them, in walking over or along a rich ledge, discovered its existence, or discerned that it might be valuable.

I do not question the integrity or truthfulness of any of these witnesses; I doubt not they were honest, and testified to matters as they saw them, or rather did not see them.

32 The value of negative evidence is often slight; it is often unsatisfactory, unless it be shown that the witness possessed thorough knowledge of the subject; that he he had ample field for observation, and that his attention was closely called to the matter under discussion.

None of these conditions obtain as to these witnesses.

On the part of the defense it was shown that this wood was cut, if not wholly within the limits of an organized "mining district," yet certainly adjacent thereto, and much of it not far from known and recognized mines, and all within what is commonly known and recognized as a mineral region—a tract of country where mines have been found and may be sought for with reasonable hope of success.

It was shown that, beginning at or near the town of Palisade, in this State, a range of mountains extends in a southerly direction for at
33 least one hundred and fifty miles; that this range bears mineral nearly its whole length; that it has been prospected over for the past twenty years and is being constantly prospected for mines, and that new discoveries are being made; that between Palisade and the town of Eureka, a distance of about 90 miles, eight or ten or more mining districts have been organized, in all of which mines of value have been found; that many of these districts are contiguous and cover nearly all of the distance between the two towns named; that these mining districts extend south from Eureka for a distance of from sixty to seventy miles, in many of which rich mines have been found.

The U. S. topographical surveys confirm this evidence. This mountain range is intersected in some places by low passes and valleys, and different parts of it have local names, but it virtually con-
34 stitutes a continuous range, though broken in places, on which mines of great value have been found and doubtless others remain to be found.

It is one of the richest mining belts or zones in the State. The Eureka mining district alone is reported to have produced between eighty and ninety millions of dollars since its discovery, and large mining operations are still goining on there.

Upon this mountain range and upon the foot-hills adjacent thereto is found the timber or trees of the character and quality mentioned in the findings of fact above set forth. It was upon this mountain range and upon the foot-hills adjacent that the wood in controversy was cut, and much of it within the limits of organized mining districts and not far remote from known mines. It can hardly be questioned or doubted that

the land upon which this wood was cut is properly classified and re-
35 cognized as mineral land, and strictly within the purview of the act of Congress above cited.

This land has no value except for its minerals. It is mountainous, or broken foot-hills, with no soil and not capable of cultivation. The wood growing thereon is fit only for domestic use; it has no value as timber to be made into lumber. It is the discovery and opening and working of mines that creates a demand for this timber or wood. The test of the Land Department as to whether a timber or mineral entry should be allowed, to wit, "which is the land most valuable for, its timber or known mines?" does not apply in cases like the one before us. The test is very proper in the cases where it is used as applied to a limited tract of land. But as applied to a large tract of land, extending as this mineral range does for hundreds of miles, it has no application, for
36 the land has no value for its wood or anything else until the discovery and opening of mines creates a market and gives a value to the wood. During the twenty-five years that Nevada has beeen a State none of this land has been surveyed except in isolated places in the valleys.

It will not be contended that the benefits of the statute are limited to the use of the wood or timber growing upon known mining claims. Such a construction would wholly defeat the object and purpose of the statute, since such timber or wood belongs to the owner of the claim. It is urged with some earnestness that, as it is shown, this wood and coal were to be used in there duction of ores and refining the product thereof. Such an use is not a mining use properly. That reducing ores by mill or furnace process and refining the bullion is not a part of mining. If not
37 properly a part of mining, it certainly is incident to it, and closely connected with it. In a very restricted sense it may be true that mining is limited to the breaking down or digging up of ore in place. In its ordinary and usual sense mining embraces many things connected therewith, and it calls to its aid the services of many classes of persons not at all skilled in or wholly ignorant of the manual labor of mining.

But not to dwell upon this point, we may conclude that reducing ores and refining the product may not be strictly mining. Still, this business by itself is a domestic industry of the highest importance to the miner and to the public.

Without reduction works it would profit the miner or the public but little to mine the ore. Reducing ores is certainly a lawful pursuit or business, and those engaged in it within the State are within the benefits
38 conferred by the statute, and entitled to use this wood or timber for this purpose. The miner is not the only person benefited by the statute. It applies to all alike who use this wood or timber for domestic or local use within the State. And it matters not whether such reduction works, mills, or furnaces are engaged in reducing ores from mines owned by the proprietors of the works or are engaged in reducing purchased ores, or in what is usually called custom work, for pay, toll, or tribute from the owner of the ores reduced. All industries within the State, not prohibited from such use, are within the protection of the statute. I have, therefore, no doubt, under the evidence in this case, but that the defendant had full right to purchase this coal and wood and use the same

at its reduction works, and that the statute above cited is a complete defense to this action.

39 It follows, therefore, that judgment must be entered for the defendant, and it is so ordered.

GEO. M. SABIN, *Judge.*

NOV. 23d, 1889.

(Endorsed:) No. 506. U. S. cir. court, dist. Nevada. The United States vs. Richmond Mining Company of Nevada. Opinion. Filed Nov. 27, 1889, nunc pro tunc as of date Nov'r, 23d, 1889. T. J. Edwards. clerk.

40 In the circuit court of the United States, ninth circuit, in and for the district of Nevada.

Aff'd't in replevin.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
against
THE RICHMOND MINING COMPANY, OF NEVADA,
defendant.

UNITED STATES OF AMERICA,
State of Nevada and County of Ormsby, ss:

Thos. E. Haydon, being first duly sworn, on his oath deposes and says, that he is the duly-commissioned, sworn, and qualified attorney of the United States for the district of Nevada, and as such is ex officio one of the attorneys for the plaintiffs in the above-entitled suit; that the facts herein stated are known to him; that the plaintiffs are the owners and entitled to the immediate possession of the following-described property, to wit: ten thousand bushels of charcoal, which lies in the bins of defendant at its furnaces in the southern part of the town of Eureka, in

41 Eureka County, in the district of Nevada; also three hundred cords of wood, which lie in and upon the yards and premises of defendant in said Eureka, which wood was cut and which charcoal was manufactured from wood unlawfully cut and removed from the unsurveyed public lands of plaintiffs, situate within said district of Nevada, contrary to its statutes in such cases made and provided.

That said property is in the possession of and wrongfully detained and held by said defendants.

That the cause of the detention of said property by defendants is unknown to affiant. That neither said property nor any part thereof has been taken for any tax, assessment, or fine, pursuant to any statute or otherwise, or seized under any execution or attachment against the property of the plaintiffs, or either of them, and the actual value of said property, according to the best information of affiant, is thirty-nine hundred

42 dollars in gold coin of the Government of the United States.

THOS. E. HAYDON.

Subscribed and sworn to before me this 4th day of December, A. D. 1888.

T. J. EDWARDS,
Clerk of said Circuit Court.

To the United States marshal of the district of Nevada:

You are hereby directed and ordered to forthwith take all of the within described personal property into your possession, and to hold the same in accordance with the law.

Given under my hand this 4th day of December, 1888.

THOS. E. HAYDEN,
Attorney of the United States for the District of Nevada.

OFFICE OF THE UNITED STATES MARSHAL,
Virginia City, Nev., January 7, 1889.

I hereby certify that I received the within and annexed
43 affidavit, and order of seizure which is endorsed thereon, at Carson City on the 4th day of December, 1888, and personally served the same on the 6th day of December, 1888, by taking into my possession five thousand (5,000), more or less, bushels of charcoal, which is lying in a large pile in the large coal-bin of the Richmond Mining Company, in the southern portion of the town of Eureka, State of Nevada, and on the 6th day of December, 1888, by taking into my possession thirteen (13) cords, more or less, of cedar wood lying on the said Richmond Mining Company's premises in the southern portion of the town of Eureka, State of Nevada. I also certify that I now hold and have in my possession all of said wood and charcoal, and that a keeper by me for that purpose duly appointed is in charge and custody of all the above described property. And also, that at the time of the said seizure all of said property was represented t o be the property of the defendants in the within entitled action, and was at said time claimed by them.

JAMES A. MOORE,
44 *United States Marshal for District of Nevada.*

(Endorsed:) No. 506. United States vs. Richmond M. Co. of Nev. Affidavit in replevin. Filed Jan'y 10, 1889. T. J. Edwards, clerk.

45 In the Supreme Court of the United States.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
THE RICHMOND MINING COMPANY OF NEVADA,
defendant in error.

The President of the United States to the judges of the circuit court of the United States for the district of Nevada, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States and the Richmond Mining Company of Nevada, a manifest error hath happened, to the great damage of the said The United States, as by its complaint appears.

We, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under
46 your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme

Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief-Justice of the said Supreme Court, this fifth day of February, A. D. 1890.

Attest:

T. J. EDWARDS,
Clerk U. S. Circuit Court, Dist. Nevada.

47 The issuance of the writ of error in the within action is hereby approved. Mch. 17, 1890.

GEO. M. SABIN,
Judge.

Copy of this writ is lodged in the clerk's office for the defendant in error this 17th day of March, 1890.

T. J. EDWARDS.
Clerk.

(Indorsed:) Supreme Court of the United States. The United States v. The Richmond Mining Company of Nevada. Writ of error. Filed Feb'y 5, 1890. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

48 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
THE RICHMOND MINING COMPANY OF NEVADA, defendant in error.

To the Richmond Mining Company of Nevada, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nevada, wherein the United States is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should
49 not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief-Justice of the Supreme Court of the United States, this 17th day of March, A. D. 1890.

GEO. M. SABIN,
Dist. Judge.

50 (Indorsed:) Supreme Court of the United States. The United States of America vs. The Richmond Mining Company of Nevada. Citation. Received a copy of the within citation March 17th, A. D. 1890. Wren & Cheney, att'ys for Deft. Filed Mch. 17, 1890.

T. J. EDWARDS,
Clerk U. S. Cir. Court Dist. Nevada.

51 In the Supreme Court of the United States of America, of October term, in the year of our Lord one thousand eight hundred and ninety.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
THE RICHMOND MINING COMPANY OF NEVADA,
Defendants in error.

Assignment of errors.

Afterwards, on the second Monday in October, in this same term, before the Justices of the Supreme Court of the United States at the capital, in the city of Washington, came the said United States, by J. W. Whitcher, esq., their attorney, and say that in the record and proceedings aforesaid there is manifest error, to wit: First. That the court erred in the conclusions of law upon the findings in said action; that the defendant was entitled to judgment in the action aforesaid, in this, that the court,

52 having found that the defendant herein at the time of the commencement of this action was in possession of sixteen cords of wood, of the value of $6.00 per cord, and 7,000 bushels of coal, of the value of twenty-one (21) cents per bushel, and that the said wood, and the wood from which said charcoal was manufactured, was cut upon the unsurveyed mineral lands of the United States not subject to entry except for mineral entry; that said wood was cut and said charcoal was burned by bona fide residents of the State of Nevada, for use in the county of Eureka, and sold to the defendant for use in carrying on its business in the town of Eureka, a distance of about three miles from defendant's mines; justifies and finds legal the purchase of this wood and coal and its use by the defendant at its reduction works, that is say, in the reduction of ores, and the separating of gold and silver from lead (facts also

53 found and set forth in said findings) under and by virtue of an act of Congress approved June 3d, 1878, U. S. Statutes, vol. 20, page 88, chapter 150, in which it is provided that bona fide residents of certain States and Territories (including the State of Nevada) are authorized and permitted to fell and remove for building, agricultural, mining, or other domestic purposes, any timber or trees growing or being on the public lands of the United States, &c.

And plaintiffs in error allege that the purchase and use of the wood and coal aforesaid by said defendant is not justified, as the court concluded, by the provisions of said statute, inasmuch as the reduction of ores and the separating of gold and silver from lead is not, properly speaking, mining (the extraction and bringing to the surface of the earth ores and mineral substances) but rather the smelting of ores, a distinct and separate business therefrom.

54 Second. The court erred in giving judgment for the defendants in this, that the facts found by the court are insufficient to support the said judgment.

And the said United States, plaintiffs in error herein, prays that the said judgment be reversed and altogether held for naught, and that plaintiff herein may have judgment for the sum of $1,566.00, the value of the wood and coal as found by the court in said findings.

J. W. WHITCHER,
Atty. for Plaintiffs in Error.

(Endorsed:) In the Supreme Court of the United States. The United States, plffs. in error, vs. The Richmond Mining Company of Nevada, deft. in error. Assignment of errors. Filed April 10, 1890, T. J. Edwards, clerk U. S. cir. court, dist. of Nevada.

55 In the circuit court of the United States, ninth circuit, and district of Nevada.

THE UNITED STATES,
v.
RICHMOND MINING COMPANY OF NEVADA.

I, T. J. Edwards, clerk of the circuit court of the United States for the ninth circuit and district of Nevada, do hereby certify that the foregoing fifty-four pages, written and printed, from 1 to 54 inclusive, are a true copy of the of the record, and of all the proceedings in the cause therein entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 19th day of June, A. D. 1890.

[SEAL.] T. J. EDWARDS,
Clerk.

(Indorsement on cover:) No. 1197. The United States, plaintiff in error, vs. The Richmond Mining Company of Nevada. Nevada C. C. U. S. Filed June 28, 1890.